IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION No: 19574 of 2004

Between:

P. Nehrulal, S/o. Late P. Seethal Singh,
R/o. 14-9-797/1, Jemerat Bazar, Hyd.

..... PETITIONER

AND

1 The Collector and District Magistrate, Hyderabad.
2 The Government of A.P., rep. by its Chief Secretary,
Hyderabd.
3 The Superintendent of Central Prison, Cherlapally, R.R. District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ of Habeas Corpus Under Art. 226 of the Constitution of India directing the respondents to produce the detenu Sri Sarju, S/o. Nehrulal, now detained in Central Prison, Cherlapally, before this Hon'ble Court and he may be ordered to be released forth with after declaring his detention as illegal and void.

Counsel for the Petitioner: MR.C.PRAVEEN KUMAR

Counsel for the Respondents: THE ADVOCATE GENERAL.

The Court made the following:

ORAL ORDER: (BY GB,J.)

The Writ Petition is filed seeking writ of Habeas Corpus directing the respondents to produce the detenu Sarju, S/o. Nehrulal now detained in Central Prison, Cherlapally before this Court and he may be ordered to be released forthwith after declaring his detention as illegal and invalid.

2. The detenu was detained by order passed by the District Collector and District Magistrate vide proceedings dated 16.8.2004 under the provisions of Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act'), on the ground that he was a bootlegger within the meaning of Section 2(b) of the Act.

3. In support of the detention order the following grounds were supplied.

> "**Ground No.1:-**
>
> On 23-5-2002 at about 12.15 P.M., on reliable information about the illegal transport of I.D. Liquor on the road opposite to Falaknama Railway Station, Hyderabad Mr.Rajeshwar Rao, Prohibition & Excise Sub Inspector, State Task Force, Hyderabad along with staff conducted route watch in the presence of mediators. During the route intercepted one scooter bearing No.ABU-1968 ridden by two persons and on seeing the officials, the rider ran away. On enquiry she revealed her name as Padala Pochamma w/o.Daser and servant of the ran away person P.Srinivas and further that the said Srinivas is Carrying I.D.Liquor Sachets being purchased the same from you. On searching, the officers found (100) I.D. Sachets from the scooter and on the information given by her, proceeded to H.No.18-11-888/11/A/B, G.M.Chowani, wherein (3) rubber tubes containing I.D.Liquor and (400) I.D. Sachets from the house were found. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against you,

said Padma Pochamma and P.Srinivas in C.O.R.No.77/02-03 of SHO, Charminar, U/Sec.7A R/w 8(e) of A.P. Prohibition Act, 1995. The said P.Pochamma was arrested and released on bail. Subsequently said P.Srinivas was surrendered before Hon'ble XIV M.M and released on bail. Further you are arrested on 24-6-2003 and later released on bail.

The sample of I.D. Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in XIV MM Court Nampaly, Hyderabad by SHO, Charminar and the C.C.No550 of 03 is pending for trial.

Ground No.2:-

On 2-5-03 at about 07-30 P.M., on reliable information about the illegal sale of I.D. Liquor at open place, Indiranagar grave yard, Chandrayana gutta Hyderabad, Mr.S.Krishna, Prohibition & Excise Sub-Inspector, Charminar Station along with staff raided the said place in the presence of mediators and caught hold you is the place along with four gunny bags total containing (1028) I.D. Liquor sachets. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against you, in C.O.R.No.29/03-04 of SHO, Charminar, U/Sec. 7A R/w 8(e) of A.P. Prohibition Act, 1995 and 34(a) of A.P. Excise Act, 1968. You are arrested and later released on bail.

The sample of I.D. Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in XIV MM Court, Nampaly, Hyd by SHO, Charminar and C.C 643 of 03 is pending trial.

Ground No.3:-

On 29-5-2003 at about 04-00 P.M., on reliable information about the illegal possession & sale of I.D. Liquor at H.No.18-2-447, Jangammet, Falaknama, Hyderabad, Mr. Yesudas, Prohibition & Excise Inspector, State Task Force along with staff raided the said place in the presence of mediators and found one person in house. On further search found one plastic bag in the room containing (200) I.D. sachets. On interrogation he revealed his name as Dandu Babu Rao and that said liquor is supplied by you and further that he is selling the I.D. Liquor on behalf of you on salary basis. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against you, in C.O.R.NO.53/03-04 of SHO, Charminar, U/Sec.7A R/w 8(e) of A.P. Prohibition Act, 1995. Said Babu Rao was arrested and later released on bail. Later you are arrested on 24-6-2003 and released on bail.

The sample of I.D.Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-sheet is filed in XIV MM Court, Nampally, Hyderabad by SHO, Charminar and C.C.No.621 of 2003.

Ground No.4:-

On 6.6.2003 at about 12.35 P.M. on reliable information about the illegal transport of I.D. Liquor at H.No.18-13/7, Masangatti, Chandrayan gutta Mr.Moulana, Prohibition & Excise Sub Inspector, State Task Force, Hyderabad along with staff conducted raid and found one boy juvenal conducting I.D. Liquor sales. The Officers caught hold him along with polythene bag containing (225) I.D. Liquor Sachets. On interrogation the boy juvenal revealed his name as Balaji S/o. Venkatraoji and that he is selling the I.D.Liquor on behalf of you on daily wages basis. The investigation Officer seized the contraband and drawn the samples, and a case was registered against you and said boy juvinal in C.O.R.No.61/03-04 of SHO, Charminar, U/Sec.7A R/w 8(e) of A.P. Prohibition Act, 1995. The said Boy juvinal was arrested and released on bail. Subsequently you are arrested on 26.6.2003 and later released on bail.

The sample of I.D.Liquor drawn from the contraband seized was sent for Chemical analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in XIV MM Court, Nampally-Hyderabad by SHO, Charminar and C.C.111 of 2004 is pending trial.

Ground No.5:-

On 17.6.2003 at about 09.00 A.M., on reliable information about the illegal possession & sale of I.D. Liquor at open place, Indiranagar Grave Yard, Chandrayana gutta, Hyderabad, Mr.H.Daram Raj, Prohibition & Excise Sub-Inspector, Charminar Station along with staff raided the said place in the presence of mediators and found one women conducting I.D. Sales keeping one plastic bag. The Staff caught hold her along with the plastic bag containing (225) I.D. Sachets. On interrogation she revealed her name as P.Pochamma W/o.Sudershan and that she is selling liquor on behalf of you on daily wages basis. The Investing Officer seized the contraband and drawn the samples, and a case was registered against you, and said Pochamma in C.O.R.No.75/03-04 of SHO, Charminar, U/Sec.7A R/w 8(e) of A.P. Prohibition Act, 1995. Said P.Pochamma was arrested and released on bail and later you are surrendered before Hon'ble XIV M.M.Court on 22.06.2003 and released on bail.

The sample of I.D.Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his

C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in XIV MM Court, Nampally, Hyderabad by SHO, Charminar and C.C.No.551 of 2003 is pending trail.

Ground No.6:-

On 23.6.2003 at about 07-00 A.M., on reliable information about the illegal possession and sale of I.D. Liquor at a place beside H.No.18-13-6/25, Hasmmabad, Chandrayangutta, Mr.H.Daram Raj, Prohibition & Excise Sub-Inspector, Charminar Station along with staff raided the said place in the presence of mediators and found one women conducting I.D.Liquor Sales keeping one plastic bag. The Staff caught hold her along with the plastic bag containing (120) I.D.Sachets. On interrogation she revealed her name as Kanta bai W/o. Jaisingh and that the liquor is purchased from you. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against you and said Kanta Bai in C.O.R.No.83/03-04 of SHO, Charminar, U/Sec. 7A R/w 8(e) of A.P. Prohibition Ac t, 1995. Said Kanta bai was arrested and released on bail and later you are surrendered before Hon'ble XIV M.M.Court on 23.06.2003 and released on bail.

The sample of I.D.Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet filed in XIV MM Court, Nampally, Hyd by SHO, Charminar and C.C.No.84 of 2004.

Ground No.7:-

On 23.6.2003 at about 07-45 A.M., on reliable information about the illegal possession & sale of I.D. Liquor at opp: H.No.18-13-6/25, Hasmmabad, Chandrayangutta, Mr.H.Daram Raj, Prohibition & Excise Sub-Inspector, Charminar Station along with staff raided the said place in the presence of mediators and found one women conducting I.D. Liquor Sales keeping one plastic bag. The Staff caught hold of her along with the plastic bag containing (210) I.D. Sachets. On interrogation she revealed her name as Purnima W/o.Rakesh and the liquor is purchased from you. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against her and you, in C.O.R.No.84/03-04 of SHO, Charminar, U/Sec. 7A R/w 8(e) of A.P. Prohibition Act, 1995. Said Kanta bai was arrested and released on bail and later you are surrendered before Hon'ble XIV M.M.Court on 23.6.2003 and released on bail.

The sample of I.D.Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his

C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in XIV MM Court, Nampally, Hyd by SHO, Charminar and C.C.No.114 of 2004 is pending trial.

Ground No 8:-

On 24.6.03 at about 04-00 P.M., on reliable information about the illegal possession & sale of I.D. Liquor at open place, Indira Nagar Grave Yard, Chandrayana gutta Hyderabad, Mr. H.Daram Raj, Prohibition & Excise Sub-Inspector, Charminar Station along with staff raided the said place in the presence of mediators and found you conducting I.D.Sales keeping one plastic bag. The Staff caught hold you along plastic bag containing (105) I.D. Liquor sachets. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against you, in C.O.R.No.85/03-04 of SHO, Charminar, U/Sec.7A R/w 8(e) of A.P. Prohibition Act, 1995. You are arrested and later released on bail.

The sample of I.D.Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in XIV MM Court, Nampally, Hyd by SHO, Charminar and C.C.No.110 of 2004 is pending trial.

Ground No 9:-

On 2.7.03 at about 09-00 P.M., on reliable information about the illegal possession & sale of I.D. Liquor at open place, Bandlaguda, Jhangeerabad, Hyderabad, Mr. H.Daram Raj, Prohibition & Excise Sub-Inspector, Charminar Station along with staff raided the said place in the presence of mediators and found one person conducting I.D. Sales keeping one plastic bag. The Staff caught hold him along with the plastic bag containing (160) I.D. Sachets. On interrogation he revealed his name as Mohd Pasha S/o. Mohd Yousuf and that the liquor is purchased form you. The Investigation Officer seized the contraband and drawn the samples, and a case was registered against him and you, in C.O.R.No.109/03-04 of SHO, Charminar, U/Sec.7A R/w 8(e) of A.P. Prohibition Act, 1995. Mohd Pasha was arrested and released on bail and later you are also arrested and produced before Hon'nle XIV M.M.Court on 20.11.2003 and released on bail.

The sample of I.D. Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in XIV MM Court, Nampally, Hyd by SHO, Charminar and C.C.No.113 of 2004 is pending trial.

Ground No.10:-

On 17.7.2003 at about 09-00 A.M., on reliable information about the illegal possession & sale of I.D. Liquor at beside H.No.18-13-6/25/2, Hasmabagh, Indira Nagar, Chandrayangutta, Mr.H.Daram Raj, Prohibition & Excise Sub-Inspector, Charminar Station along with staff raided the said place in the presence of mediators and found one person conducting I.D. Liquor Sales keeping three plastic bags. The Staff caught hold of him along with the plastic bags containing (566) I.D. Sachets. On interrogation he revealed his name as Jaisingh S/o.Bansu and the liquor is purchased from you and selling the I.D. Liquor. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against him and you, in C.O.R.No.127/03-04 of SHO, Charminar, U/Sec. 7A R/w 8(e) of A.P. Prohibition Act, 1995. Said Jaisingh was arrested and released on bail and later you are arrested and produced before Hon'ble XIV M.M.Court on 20.11.2003 and released on bail.

The sample of I.D. Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in XIV MM Court, Nampally, Hyd by SHO, Charminar and C.C.No.332 of 2004 is pending trial.

Ground No.11:-

On 14.11.2003 at about 01-00 P.M., on reliable information about the illegal possession & sale of I.D. Liquor at beside H.No.18-13-7/9/18, Indira Nagar, Chandrayangutta, Mr.Sri Mubasir Mehdi, Prohibition & Excise Sub-Inspector, Charminar Station along with staff raided the said place in the presence of mediators and found one person conducting I.D. Liquor Sales keeping plastic bags. The Staff caught hold him along with the plastic bag containing (106) I.D. Sachets. On interrogation he revealed his name as G.Venkatesh S/o. Buddi and the liquor is purchased from you and selling the I.D. Liquor on behalf of you. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against him and you, in C.O.R.No.269/03-04 of SHO, Charminar, U/Sec. 7A R/w 8(e) of A.P. Prohibition Act, 1995. Said G.Venkatesh was arrested and released on bail and later you are surrendered before Hon'ble XIV M.M.Court on 20.11.2003 and released on bail.

The sample of I.D. Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in XIV MM Court, Nampally, Hyd by SHO, Charminar and C.C.No.408 of 2004 is pending trial.

Ground No 12:-

On 20.11.2003 at about 03-00 P.M., on reliable information about the illegal possession & sale of I.D. Liquor at beside the H.No.18-1-544/5/92, Pawathi nagar, Kandikal gate, Hyderabad. Mr. Sri Mubasir Mehdi, Prohibition & Excise Sub-Inspector, Charminar Station along with staff raided the said place in the presence of mediators and found two persons keeping one gunny bag on a Scooter and on seeing the officers they tried to ran away. Immediately the staff detained the persons. On opening the gunny bag it is found there are (500) I.D. Liquor sachets in the bag. On interrogation they revealed that their names as one V.Yadaiah, S/o.Jangaiah and another is you and selling the I.D. Liquor sachets for their livery hood and the said Scooter bearing No AHU-2543 is using for transporting of I.D. Liquor. The Investigating Officer seized the contraband along with Scooter and drawn the samples, and a case was registered against him and you, in C.O.R.No.275/03-04 of SHO, Charminar, U/Sec. 7A R/w 8(e) of A.P. Prohibition Act, 1995. Said G.Venkatesh and you both were arrested and released on bail.

The sample of I.D. Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E.Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in XIV MM Court, Nampally, Hyd by SHO, Charminar and C.C.No.364 of 2004 is pending trial.

Ground No.13:-

On 11.7.2004 at about 5.00 P.M., on reliable information about the illegal possession and sale of I.D. Liquor at open place, Jahangeerabad, Bandlaguda, Hyderabad Mr.Sri Ashok Kumar, Prohibition and excise Sub-Inspector, Charminar Station along with other officers and staff raided the said place and found one person sitting in the ground. On seeing the officers he tried to ran away and the officer detained him. On searching (20) I.D. Sachets found in his pockets. On further search the officer seized (450) I.D. Sachets from the place. On interrogation they revealed that their names as Mohd Pasha S/o Yousuf and the said liquor was supplied by you. The investigating Officer seized the contraband and drawn the samples, and a case was registered against him and you, in C.O.R.No.162/04-05 of SHO, Charminar, U/Sec. 7A R/w 8(e) of A.P. Prohibition Act, 1995. Said Mohd Pasha was arrested and released on bail. You are under absconding.

The sample of I.D. Liquor drawn from the contraband seized was sent for Chemical Analysis and the report is awaited. Case is under investigation.

The said detention order came to be challenged before this Court under this Writ Petition.

4. Learned Senior Counsel appearing for the detenu submits that the order of detention is wholly illegal and unsustainable in law. He submits that as far as ground No.1 is concerned, the offence was alleged to have been committed on 23.5.2002 and the order of detention was issued on 16.8.2004. Therefore, the ground No.1 has no proximity or continuity to the order of detention. Hence, it is a stale ground, which vitiates the entire detention order. Secondly, he also submits that in ground Nos. 2 to 12 it is stated that the percentage of fusel oil is not mentioned except stating that the result of the analyst is positive, inasmuch as the percentage of fusel oil has not been mentioned, the order is liable to be set aside.

5. Learned counsel would refer to the decision of the Division Bench of this Court in **BOYA CHINNA SUBBARAIDU v THE COLLECTOR AND DISTRICT MAGISTRATE, KURNOOL** as followed by this Court in catena of decisions. Thirdly, he also submits that ground No.13 is irrelevant ground inasmuch as even before the chemical analyst report is received this was taken into consideration for issuing the detention order. So under these three grounds the order of detention is liable to be set aside.

6. Learned Public Prosecutor submits that the detenu has been indulging in illegal activities right from 2002 and the order is sustainable in law and valid.

7. We have heard both the learned counsel.

8. As we find from the ground No.1 it relates to the incident took place on 23-5-2002 and the order of detention is passed on 16-8-2004. Thus, there is a long gap between the alleged act committed on 23-5-2004 and the date of order of detention. The Supreme Court held that there should be proximity and nexus with the acts alleged against the detenu, but in the instant case we find that a stale ground has been taken into consideration. Secondly, we find that ground No.13 is also irrelevant, inasmuch as it was taken into consideration even before the result of the analyst is received. Thirdly, also we find the percentage of fusel oil was not mentioned in the analyst report in respect of ground Nos. 2 to 12. Thus, it is covered

by the decision of the Division Bench of this Court in **K. CHINNAPPA REDDY v THE DISTRICT COLLECTOR-CUM-DISTRICT MAGISTRATE & OTHERS**. Thus, we find that even one ground is sufficient to set aside the order of detention and the order of detention is wholly unsustainable in law.

9. In the result, the Writ Petition is allowed and the order of detention is hereby quashed and the detenu shall be at liberty forthwith, if he is not required in any other case.

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(G. BIKSHAPATHY, J.)

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(CH.S.R.K. PRASAD, J.)

Date: 17-11-2004

KSN/ES

That Rule Nisi is made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this **Wednesday the Seventeenth day of November Two thousand and Four.**

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ASSISTANT REGISTRAR

To

1 The Collector and District Magistrate, Hyderabad.
2 The Chief Secretary, Government of A.P., Hyderabd.
3 The Superintendent of Central Prison, Cherlapally, R.R. District.

4. 2 CCs to the Advocate General, High Court of A.P., Hyderabad (OUT).

5. 2 CD copies.